

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRUSTEES OF THE MASON TENDERS
DISTRICT COUNCIL WELFARE FUND,
PENSION FUND, ANNUITY FUND, AND
TRAINING PROGRAM FUND, ANNA GUTSIN,
AND ROBERT BONANZA,

19-cv-0711 (JGK)

ORDER

Petitioners,

- against -

A.J.S. PROJECT MANAGEMENT, INC.,

Respondent

JOHN G. KOELTL, District Judge:

The Trustees of the Mason Tenders District Council Welfare Fund, Pension Fund, Annuity Fund, and Training Program Fund, (the "Funds"); Anna Gutsin in her capacity as the Director of the Funds; and Robert Bonanza as the Business Manager of the Mason Tenders District Council of Greater New York (the "Union") (together with the Funds, and Anna Gutsin, the "Petitioners"), have filed a petition to confirm an arbitration award (the "Petition"), pursuant to section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185. The arbitration award was issued by arbitrator Joseph Harris on January 25, 2018 (the "Award"). For the Award which the Petitioners seek to confirm, the arbitrator determined that the Respondent is liable for a total of \$284,119.59, consisting of \$160,004.34 of delinquent Fund contributions, \$12,967.25 in dues

and PAC contributions, \$31,257 of "Current Interest," \$62,515.00 of an "ERISA Penalty: Double the Interest Owed," plus interest of late payments, attorney's fees and other costs. Petition to Confirm Arbitration Award, ECF No. 1 ("Pet."), Ex. 1.

The Petitioners' Petition states that the Funds' Trust Agreements provide that:

[I]n the event legal action is taken, the Employer is responsible for: (a) unpaid contribution; (b) interest on unpaid contributions determined by using the rate prescribed under 26 U.S.C. § 6621; (c) an amount equal to the aforesaid interest on unpaid contributions for liquidated damages; (d) reasonable attorney's fees and costs of the action; [and] (e) such other legal or equitable relief as the court deems appropriate.


Pet. ¶ 9. Section 502(g)(2)(C) of ERISA provides that the Court may award an amount of liquidated damages equal to the greater of either "interest on the unpaid contributions" or "an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount of" unpaid contributions. 29 U.S.C. § 1132(g)(2)(C).

In this case, the arbitrator appears to have awarded both \$31,257.50 in current interest, plus \$62,515.00 as an "ERISA Penalty." This would appear to award double interest as liquidated damages in addition to interest on the unpaid contributions, rather than an "amount equal to the" interest as the liquidated damages.

The Petitioners should explain why this Court should not award the current interest of \$31,257.50 plus an additional payment of only \$31,257.50. The Petitioners should provide the Court with an explanation by **November 6, 2020**.

SO ORDERED.

Dated: New York, New York
 October 30, 2020



John G. Koeltl
United States District Judge